

**MINUTES OF
THE PARTNERSHIPS AND LIMITED LIABILITY COMPANIES COMMITTEE
OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA**

March 16, 2006

10:00 am – 11:40 am

Via Teleconference

Present: Brad Rogerson (Chair); Ed Gartenberg (Vice-Chair); Eric Sternberger (Secretary); Phil Jelsma; Bradley Brigante (Member); Charles McKee; Allan Duboff; and Larry Doyle (Legislative Representative)

I. Administrative Matters

A. Introduction:

1. Adoption of February Minutes: This matter has been put forward to the April 2006 meeting.

B. Report from Business Law Section Leadership Conference: "Inspiring Involvement"

1. Membership:

a. Current Member Involvement: The Chair led a discussion regarding the level of involvement of those who are PLLC Committee Members, but have not participated as of late.

- Contacting members: The Chair will contact certain PLLC Committee Members regarding involvement and whether they would like to continue on the committee.
- Standards of participation: A brief discussion occurred regarding past standards of participation for committee members, including required attendance.
- Conversion to active membership vs. resignation: The Chair led the discussion regarding contacting inactive members to address greater participation or resignation.

b. New Applicants:

- E-Bulletin Draft: A discussion occurred regarding the drafts prepared by the Chair, and there was a consensus that they would be effective with some minor revisions.
- Getting out there (current project ad blitz): The committee discussed this matter generally, including certain time delays between e-blasts to maximize effectiveness.
- Member survey: The Chair solicited comments regarding whether a member survey would be effective.

2. New Technology

- a. Workrooms: Possible Intranet web access for committee members only may be unveiled after some testing. The Intranet site may include a bulletin board site and storage for draft legislation and revisions.
 - b. Video meetings: Video meetings may be made available to the committee in the future, but the centers having that technology are somewhat limited in location.
 3. Updated Subcommittee Organization Chart: The Chair updated the organization chart and referred the committee to review it further.
 4. Updated Meeting Chart: The Chair referred the committee to review the meeting chart.
- C. Legislative Day – Sacramento: The Chair raised the issue of organizing a legislative day to meet and greet with certain legislative members and their aides. Scheduling and attendance were discussed, including that the legislative timeline should be considered for greater effectiveness. Larry Doyle agreed to look into a potential date for such a day and will report back to the Chair.
- D. BLS Committee Liaisons:
1. Executive Committee: Allan Duboff briefly noted the retreat (discussed above), and stated that perhaps an e-blast would be appropriate to alert constituency regarding updates, including the LLC fee issue.
 2. Legislative: No report was made.
 3. Corporations Committee: No report was made.
- E. Upcoming Critical Dates and Deadlines:
- BLN Submission Deadline: March 15, 2006.

II. Subcommittee Reports

A. Publications Subcommittee:

1. BLN Article Topics and Authors
 - a. Series LLC's (Brad Rogerson, Eric Sternberger)
 - b. Fiduciary Duties (Ed Gartenberg): Ed Gartenberg will submit article of publication in the June issue.
 - c. Non-Equity Partners (Phil Jelsma)
 - d. Attorney General (opinion side note – Rick Burt): Rick Burt agreed to include an opinion on the Attorney General's position regarding Professional LLC's (i.e. Businesses licensed under the Business & Professions Code).

2. Drafts: March 15, 2006 Deadline

B. Educational Programs Subcommittee: Brad Rogerson

1. State Bar Annual Meeting - CLE Program regarding RERUPA has been confirmed for October 6, 2006, from 9 am - 10 am.
2. Other Educational Programs (webcasts, CLE credit)
 - a. Tax webinars: The Chair noted the potential advantages of "Webinars", and that it may be helpful for web site content. The Chair raised tax as a potential topic that a CPA may want to participate on, but is certainly open to any topic.
 - b. Ed Gartenberg announced a Potential joint MCLE program with the Corporations Committee regarding SEC investigations/enforcement.

C. Legislation Subcommittee:

1. California Statutory Trusts Proposal
2. Revised Limited Partnership Act (2001), Affirmative Legislative Proposal (report from Sacramento): Phil Jelsma reported regarding the status of AB 339, which relates to Reorganizations of Limited Partnerships.
3. Affirmative Legislation Proposals (due June 1, 2006): Phil Jelsma reported that Series LLC's have been discussed and that a draft bill could be made and circulated to the appropriate legislative committees. Phil Jelsma also reported that a Uniform LLC Act may be approved soon by NCCUSL that will require some review and analysis. In addition, a Model Entity Transaction Act for mergers and conversions for all entities, instead of separately in the code regarding each entity type appears favored by NCCUSL, but there has been some opposition by other subcommittees.
4. The Chair will put assign tasks for the drafting/revision of a Guide regarding operating a California Limited Partnership, addressing RERUPA.

D. Webpage Subcommittee:

1. General Updates: The Chair announced that the update is nearly complete, but that our meeting schedule update is pending.
2. Practitioner's Corner: The Chair solicited assistance for the Practitioner's Corner on the Web site, possibly regarding an Attorney General Opinions.
3. Upcoming Events (state bar CLE program, BLN issue): This topic was addressed above.

E. Case Law Developments Subcommittee:

1. Northwest v. California Franchise Tax Board: Charles McKee discussed a proposed statement of decision from the Superior Court. Northwest is a Washington limited liability company that registered in the State of California but never operated its business or employed personnel in

California. The FTB demanded gross sales taxes. Northwest paid the taxes and sued for a refund. The Superior Court stated that the gross receipts tax failed to be apportioned for California transactions versus other jurisdictions. The Court found that Northwest was entitled to a refund given the facts. The consensus of the committee was that a California legislative correction is required to conform to the Commerce and Due Process Clauses of the U.S. Constitution.

III. Practice Issues

A. Talking Points: FTB and Series LLCs Brad Brigante raised the following:

1. Conflict between a 3-year statute of limitations ("SOL") in Delaware v. a 4-year SOL on improper distributions;
2. California's 4-year SOL on improper distributions v. a 10-year SOL on latent defects. Consensus that the 10-year latent defect SOL would apply where the LLC did not reserve monies to cover latent defect claims. Delaware law requires a reserve, California does not.

IV. Meeting adjourned @ 11:40 am.